HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)
Chapter VIII Rule 32(2)(b)

Description of the Case.

Writ Petition No. 2622 (S/S) 2001
(old no.32648/93)

Subhash Saxena. ... Petitioner

Vs.

Establishment Officer G.B. Pant University
And three others ... Respondents

Approved for reporting.

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~~Not approved for reporting~~

Date of Decision 6 June 2006.

Initial of Judge.

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HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 2622(S/S)2001
(Old No. 32648/93)

Subhash Saxena S/o Radhey Shyam Saxena,
Resident of Ward no. 7, Kichha,
District Nainital (now U.S. Nagar). ---- Petitioner.

Versus

1. Establishment Officer Govind Ballabh Pant University, of Agriculture & Technology Pant Nagar, District Nainital.
2. Vice-Chancellor, Pantnagar University, Nainital,
3. The Comptroller Govind Ballabh Pant University, Pant Nagar, Nainital,
4. Director of Research, Pant Nagar University, Nainital ----Respondents.

Sri Paresh Tripathi, learned counsel for the petitioner,
Sri Rajendra Dobhal, learned counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Paresh Tripathi, learned counsel for the petitioner and Sri Rajendra Dobhal, learned counsel for the respondents.

2. By means of this writ petition, the petitioners have prayed for the following reliefs:-

i. To issue a writ of mandamus directing the opposite parties to allow the petitioner to join his new assignment in view of the appointment letter,

ii. To issue a writ of mandamus directing the opposite parties to pay the new pay-scale to the petitioner in view of the order of the Director, annexure no. 12 to the writ petition, and to pay the arrears of his salary from 14.12.1979 till today,

iii. To issue any other writ, order or direction which may be deemed fit and proper in the circumstances of the case,

iv. To award costs of this writ petition to the petitioner.

3. Submission of the learned counsel for the petitioner is that the petitioner was working on the post of Accounts Clerk in the Department of Director of Research Pantnagar University. An advertisement was published by the University for filling up the post of Senior Accounts Clerk. The petitioner applied for the post and appeared in written test as well as in interview and, thereafter he was declared successful. The petitioner was required to furnish bond and after fulfilling the condition, on executing the bond, the petitioner was given appointment on the post of Senior Accounts Clerk in the University on 14.12.1979. The appointment letter is annexed as annexure no. 5 to the writ petition. The petitioner requested the respondent no. 5 i.e. the Director of Research, under whom he was serving, to relieve him so that he may join his new assignment. The Director of Research, Pantnagar University, instead of relieving the petitioner wrote a letter to the Deputy Comptroller that he is unable to relieve the petitioner till his substitute is available. The matter was placed before the Vice Chancellor.

4. There was correspondence between the Vice Chancellor and the Director in regard to the matter of the petitioner. Since the petitioner was not relieved by the Director, the Vice Chancellor vide order dated 13.03.1980 cancelled the appointment of the petitioner on the post of Senior Accounts Clerk. The petitioner represented before the Vice Chancellor with the request that he may not be panelized for his no fault, with the result the Vice Chancellor after providing him

opportunity of personal hearing and after perusing the entire record, revoked the cancellation order vide its order dated 02.04.1980 and directed the Director of Research to relieve the petitioner so that the he may join his new assignment.

5. It is a matter of great concern, that the Director of Research, who is subordinate to the Vice Chancellor, did not comply the order and has violated the orders passed by his superior and did not relieve the petitioner in compliance of the order passed by the Vice Chancellor. The Director of Research has also submitted that the petitioner may be given promotion in the parent department on the post of Senior Accounts Clerk. Inspite of several letters written by the Administrative Officer and by the University, on behalf of the Vice Chancellor, to the Director to relieve the petitioner, the Director did not pay any heed to the repeated requests and reminders of the Vice Chancellor and did not permit the petitioner to join his new assignment. Ultimately, the petitioner was relieved and was permitted to join his new assignment on 28.08.1980 which is apparent from para-12 of the counter affidavit filed by the University wherein it is stated that the petitioner was relieved from the Directorate in the afternoon of 28.08.1980 and has submitted his joining report in the Office of DSW in the afternoon on 28.08.1980 as Senior Accounts Clerk.

6. Submission of the learned counsel for the petitioner is that though the petitioner was entitled to get the salary and all consequential benefits including the seniority w.e.f. 14.12.1979 i.e. the date of his appointment, the petitioner was not paid salary on the post of Senior Accounts Clerk, even after he joined his duties on 28.08.1980. Aggrieved with the inaction of the respondents, the writ petition was filed before the Allahabad

High Court and the Allahabad High Court on 15.09.1993 passed an order that “meanwhile the respondents are directed to pay current salary to the petitioner for the post of Senior Accounts Clerk. However, payment of arrears shall be subject to the final orders passed by this Court”.

7. Counsel for the respondents has informed the Court that the University has already passed order sometimes in the month of January 2005 sanctioning pay-scale of Senior Accounts Clerk to the petitioner from 15.09.1993 i.e. from the date of passing of the interim order by the Allahabad High Court. Learned counsel for the respondents has further submitted that the petitioner has already been granted notional increments on the post of Senior Accounts Clerk w.e.f. 15.12.1979.

8. It is admitted in the counter affidavit that the petitioner had joined his duties on the post of Senior Accounts Clerk on 28.08.1980. Inspite of this admission on the factual position, rather granting the same from 28.08.1980 the petitioner was granted pay-scale of Senior Accounts Clerk with effect from 15.09.1993.

9. It is not disputed that the petitioner was selected to the post of Senior Accounts Clerk and was appointed on 14.12.1979 on the said post; he joined his duties, as such, on 28.08.1980 and he is entitled to get salary of the post from the date of his appointment and he is entitled for all other benefits including the increments/pay-fixation/seniority and promotion according to his seniority from the date of his appointment on the post of Senior Accounts Clerk as has been accepted by the University by providing him notional increments w.e.f. 15.12.1979.

10. For the reasons recorded above, the writ petition deserves to the allowed.

11. Accordingly, the writ petition is allowed. No order as to costs.

(M.M. Ghildiyal, J.)

June 6, 2006:
NCM: